

1 Julian I. Gurule (CA SBN 252160)*
2 O'Melveny & Myers, LLP
3 400 S. Hope St., 18th Fl.
4 Los Angeles, California 90071-2899
5 Telephone: (213) 430-6067
6 Email:jgurule@buchalter.com

HONORABLE WHITMAN L. HOLT

7 Madhu Pocha (CA SBN 260997)*
8 O'Melveny & Myers, LLP
9 1999 Avenue of the Stars
10 Los Angeles, CA 90067
11 Telephone: (310) 553-6700
12 Email: mpocha@omm.com

13 *Admitted *Pro Hac Vice*

14 *Counsel to Debtors and Debtors in*
15 *Possession*

16 Armand J. Kornfeld, WSBA No. 17214
17 Aimee S. Willig, WSBA No. 22859
18 Jason Wax, WSBA No. 41944
19 Bush Kornfeld LLP
20 601 Union Street, Suite 5000
21 Seattle, WA 98101-2373
22 Tel: (206) 292-2110
23 Emails: jkornfeld@bskd.com,
24 awillig@bskd.com, jwax@bskd.com

25 *Counsel for the Official Committee of*
26 *Unsecured Creditors*

John T. Bender, WSBA No. 49658
Corr Cronin LLP
1015 Second Avenue, 10th Floor
Seattle, Washington 98104-1001
Telephone: (206) 625-8600
jbender@corrchronin.com

Special Litigation Counsel for the
Official Committee of Unsecured
Creditors

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re:

ICAP ENTERPRISES, INC., *et al.*,

Chapter 11

Lead Case No. 23-01243-WLH11
Jointly Administered

STATUS REPORT IN ADVANCE OF
APRIL 9, 2024 HEARING

- 1 -

BUSH KORNFELD LLP
601 UNION ST, SUITE 5000
SEATTLE, WA 98101
TELEPHONE: 206.292.2110

Debtors.¹

**DEBTORS' AND COMMITTEE'S
STATUS REPORT IN ADVANCE
OF APRIL 9, 2024 HEARING**

The above-captioned debtors and debtors in possession (the "Debtors") and the Official Committee of Unsecured Creditors ("Committee") in the above-captioned chapter 11 cases (the "Chapter 11 Cases") file this status report (the "Status Report") in advance of the April 9, 2024 hearing and status conference (the "Hearing").

I. Sales of Estate Property Pursuant to the Property Transaction Procedures

On March 14, 2024, the court entered the *Order Granting Debtors' Motion for Order Establishing Procedures for Sale of Property of the Estates* [ECF No. 611] that approved the procedures to sell or transfer real property of the Debtors' estates, as set forth therein (the "Property Transaction Procedures").

Pursuant to the Property Transaction Procedures, on April 4, 2024, the court entered the *Order Approving Sale of Property of the Estates Pursuant to Transaction Procedures (1121 14th Avenue, Unit E, Seattle, WA 98122)* [ECF No. 717], approving the sale of 1121 14th Avenue, Unit E, Seattle, WA 98122.

Pursuant to the Property Transaction Procedures, on April 4, 2024, the court entered the *Order Approving Sale of Property of the Estates Pursuant to Transaction*

¹ The Debtors (along with their case numbers) are iCap Enterprises, Inc. (23-01243-11); iCap Pacific NW Management, LLC (23-01261-11); iCap Vault Management, LLC (23-01258-11); iCap Vault, LLC (23-01256-11); iCap Vault 1, LLC (23-01257-11); Vault Holding1, LLC (23-01256-11); iCap Investments, LLC (23-01255-11); iCap Pacific Northwest Opportunity and Income Fund, LLC (23-01253-11); iCap Equity, LLC (23-01247-11); iCap Pacific Income 4 Fund, LLC (23-01251-11); iCap Pacific Income 5 Fund, LLC (23-01249-11); iCap Northwest Opportunity Fund, LLC (23-01253-11); 725 Broadway, LLC (23-01245-11); Senza Kenmore, LLC (23-01254-11); iCap Campbell Way, LLC (23-01250-11); UW 17th Ave, LLC (23-01267-11); iCap Broadway, LLC (23-01252-11); VH 1121 14th LLC (23-01264-11); VH Senior Care LLC (23-01266-11); VH Willows Townhomes LLC (23-01262-11); iCap @ UW, LLC (23-01244-11); VH 2nd Street Office, LLC (23-01259-11); VH Pioneer Village LLC (23-01263-11); iCap Funding LLC (23-01246-11); iCap Management LLC (23-01268-11); iCap Realty, LLC (23-01260-11); Vault Holding, LLC (23-01270-11); iCap Pacific Development LLC (23-01271-11); iCap Holding LLC (23-01272-11); iCap Holding 5 LLC (23-01273-11); and iCap Holding 6 LLC (23-01274-11); Colpitts Sunset, LLC (23-01432-11); CS2 Real Estate Development LLC (23-01434-11); and iCap International Investments, LLC (23-01464-11).

1 *Procedures (4906 S. Willow Street, Unit A Seattle, WA 98118)* [ECF No. 718],
2 approving the sale of 4906 S. Willow Street, Unit A Seattle, WA 98118.

3 Pursuant to the Property Transaction Procedures, on April 4, 2024, the court
4 entered the *Order Approving Sale of Property of the Estates Pursuant to Transaction*
5 *Procedures (4910 S. Willow Street, Unit B, Seattle, WA 98118)* [ECF No. 719],
6 approving the sale of 4910 S. Willow Street, Unit B, Seattle, WA 98118.

7 Pursuant to the Property Transaction Procedures, on April 4, 2024, the court
8 entered the *Order Approving Sale of Property of the Estates Pursuant to Transaction*
9 *Procedures (4918 S. Willow Street, Unit C, Seattle, WA 98118)* [ECF No. 720],
10 approving the sale of 4918 S. Willow Street, Unit C, Seattle, WA 98118.

11 Pursuant to the Property Transaction Procedures, on April 4, 2024, the court
12 entered the *Order Approving Sale of Property of the Estates Pursuant to Transaction*
13 *Procedures (1226 160th St. SW, Lynnwood, WA 98087)* [ECF No. 721], approving the
14 sale of 1226 160th St. SW, Lynnwood, WA 98087.

15 **II. Motions on Calendar for the Hearing.**

16 **A. Debtors' Motion to Approve Entry Into and Performance Under the**
17 **Cooperation Agreement**

18 On February 23, 2024, the Debtors filed the *Debtors' Motion to Approve Entry*
19 *Into and Performance Under the Cooperation Agreement* [ECF No. 470] (the "9019
20 Motion"). On March 18, 2024, Umpqua Bank filed *Umpqua Bank's Objection to*
21 *Motion to Approve Entry Into and Performance Under the Cooperation Agreement*
22 [ECF No. 626]. At the March 27, 2024 hearing and status conference, the Debtors
23 requested that the court continue the hearing on the 9019 Motion until April 9, 2024 to
24 allow for the Debtors to consult with their independent Board of Directors, the proposed
25 DIP lender, the Committee and other constituents.
26

1 The Debtors and the Committee have agreed to the revised form of order
2 approving the 9019 Motion attached hereto as Exhibit A (the “Proposed 9019 Order”).
3 A redline comparing the Proposed 9019 Order to the proposed order attached to the
4 9019 Motion is attached hereto as Exhibit B. The Debtors and the Committee
5 understand that Umpqua Bank objects to the Proposed 9019 Order but respectfully
6 request that the court overrule their objection and enter the Proposed 9019 Order.

7 The Cooperation Agreement satisfies the standards for approval as addressed in
8 the 9019 Motion. The Cooperation Agreement simply allocates workstreams and sets
9 the groundwork for cooperation between the Debtors and the Committee for the
10 remainder of these Chapter 11 Cases.

11 The Proposed 9019 Order provides that Buchalter will not represent the Debtors
12 with respect to matters associated with the Cooperation Agreement, and it further
13 provides for a general, broad reservation of Umpqua Bank’s rights and remedies. The
14 Proposed 9019 does not otherwise speak to Umpqua Bank’s alleged retention issues
15 with the Debtors’ professionals, and all such arguments related thereto are reserved.

16 Buchalter has filed *Buchalter’s Supplemental Employment Application* [ECF No.
17 669] (the “Supplemental Retention Application”), which is set for hearing on April 17,
18 2024. Any objections to the Supplemental Retention Application are due today. The
19 Debtors and Committee submit that the court should defer ruling on any retention
20 matters until the calendared hearing, which will provide Buchalter with an opportunity
21 to respond to any objections.

22 The Debtors and the Committee further submit that nothing in the Proposed 9019
23 Order or Cooperation Agreement addresses the merits of any claims held by the
24 Debtors’ estates and, accordingly, the court should overrule any new suggestion by
25 Umpqua Bank that seeks language addressing the issue of the merits of claims; such
26 language is an unnecessary addition.

1 **III. Next Steps.**

2 The Debtors and the Committee continue to assess the most productive and
3 efficient path forward and through these Chapter 11 Cases. Their focus is on the path
4 to recovering funds for ultimate distribution to the 1,800 investor creditors owed
5 \$250,000,000.

6 On March 3, 2024, the Debtors filed a turnover complaint against Chris
7 Christensen and Jim Christensen (the "Complaint") and emailed courtesy copies to
8 counsel for both defendants, thereby commencing the adversary proceeding captioned
9 *ICap Enterprises, Inc. v. Christopher J. Christensen; Jim Christensen*, Adv. Pro. No.
10 24-80002-WLH. The Debtors served both defendants with the Complaint [A.P. ECF
11 No. 7] and the deadline to answer was April 3, 2024. Counsel for Chris Christensen
12 requested a 14-day extension of the answer deadline, which the Debtors granted, so that
13 the parties could continue to negotiate and finalize a stipulation for the return of iCap
14 computers. Since the filing of the Complaint, Jim Christensen has not reached out to
15 the Debtors to discuss a stipulation for the turnover of iCap computers, nor has he
16 requested an extension of the answer deadline. The Debtors plan to move for entry of
17 judgment against Jim Christensen.

18
19 DATED this 8th day of April, 2024:

20 /s/ Armand J. Kornfeld

21 ARMAND J. KORNFELD, WSBA NO. 17214

22 AIMEE S. WILLIG, WSBA #22859

23 JASON WAX, WSBA #41944

24 BUSH KORNFELD LLP

25 *Counsel for the Official Committee of*
26 *Unsecured Creditors*

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JOHN T. BENDER, WSBA NO. 49658
CORR CRONIN LLP

*Special Litigation Counsel for the Official
Committee of Unsecured Creditors*

And

JULIAN I. GURULE (Admitted *Pro Hac Vice*)
MADHU POCHA (Admitted *Pro Hac Vice*)
O'MELVENY & MYERS LLP

Counsel to Debtors and Debtors in Possession

EXHIBIT A

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8
9 UNITED STATES BANKRUPTCY COURT
10 EASTERN DISTRICT OF WASHINGTON

11 In re

12 ICAP ENTERPRISES, INC., et al.,

13 Debtors.¹

Chapter 11

Lead Case No. 23-01243-11
(Jointly Administered)

14 **ORDER APPROVING ENTRY**
15 **INTO AND PERFORMANCE**
16 **UNDER THE COOPERATION**
17 **AGREEMENT**

18 ¹ The Debtors (along with their case numbers) are iCap Enterprises, Inc. (23-01243-11); iCap Pacific NW Management, LLC (23-01261-11); iCap Vault Management, LLC (23-01258-11); iCap Vault, LLC (23-01256-11); iCap Vault 1, LLC (23-01257-11); Vault Holding 1, LLC (23-01265-11); iCap Investments, LLC (23-01255-11); iCap Pacific Northwest Opportunity and Income Fund, LLC (23-01248-11); iCap Equity, LLC (23-01247-11); iCap Pacific Income 4 Fund, LLC (23-01251-11); iCap Pacific Income 5 Fund, LLC (23-01249-11); iCap Northwest Opportunity Fund, LLC (23-01253-11); 725 Broadway, LLC (23-01245-11); Senza Kenmore, LLC (23-01254-11); iCap Campbell Way, LLC (23-01250-11); UW 17th Ave, LLC (23-01267-11); iCap Broadway, LLC (23-01252-11); VH 1121 14th LLC (23-01264-11); VH Senior Care LLC (23-01266-11); VH Willows Townhomes LLC (23-01262-11); iCap @ UW, LLC (23-01244-11); VH 2nd Street Office, LLC (23-01259-11); VH Pioneer Village LLC (23-01263-11); iCap Funding LLC (23-01246-11); iCap Management LLC (23-01268-11); iCap Realty, LLC (23-01260-11); Vault Holding, LLC (23-01270-11); iCap Pacific Development LLC (23-01271-11); iCap Holding LLC (23-01272-11); iCap Holding 5 LLC (23-01273-11); iCap Holding 6 LLC (23-01274-11); Colpitts Sunset, LLC (23-01432-11); CS2 Real Estate Development LLC (23-01434-11); and iCap International Investments, LLC (23-01464-11).

21 **ORDER APPROVING ENTRY INTO**
22 **AND PERFORMANCE UNDER THE**
23 **COOPERATION AGREEMENT– 1**

BUSH KORNFELD LLP
LAW OFFICES
601 Union St., Suite 5000
Seattle, Washington 98101-2373
Telephone (206) 292-2110
Facsimile (206) 292-2104

1 Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (the
2 “Debtors”) pursuant to §§ 105(a) and 363(b) of title 11 of the United States Code, 11 U.S.C. §§ 101, et
3 seq. (the “Bankruptcy Code”), Rule 9019 of the Federal Rules of Bankruptcy Procedure (the
4 “Bankruptcy Rules”), and Rule 9019-1 of the Local Rules of the United States Bankruptcy Court for
5 the Eastern District of Washington (the “Local Rules”), for entry of an order approving entry into and
6 performance under the Cooperation Agreement, dated February 6, 2024 (the “Cooperation Agreement”)
7 by and among the Debtors and the Committee, all as more fully set forth in the Motion; and the court
8 having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the court having found
9 this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the court may enter a final order
10 consistent with Article III of the United States Constitution; and the court having found that venue of
11 this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and
12 the court having considered the statements of counsel and the Miller Declaration in support of the
13 Motion and Umpqua Bank’s Objection to Motion to Approve Entry into and Performance Under the
14 Cooperation Agreement [ECF No. 626] (“Umpqua Bank’s Objection”); and it further appearing that the
15 relief requested in the Motion is in the best interests of the Debtors’ bankruptcy estates, their creditors,
16 and other parties in interest; and after due deliberation and sufficient cause appearing therefor,

17 **IT IS HEREBY ORDERED THAT:**

- 18
- 19 1. The Motion [ECF No.470] is **GRANTED**, as set forth below.
- 20 2. The Cooperation Agreement attached hereto as **Exhibit 1** and the terms therein are
21 hereby approved, except as amended by the conditions set forth in Section 4., below.

22

23 ² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion or the
 Cooperation Agreement, as applicable.

**ORDER APPROVING ENTRY INTO
AND PERFORMANCE UNDER THE
COOPERATION AGREEMENT– 2**

BUSH KORNFIELD LLP
LAW OFFICES
601 Union St., Suite 5000
Seattle, Washington 98101-2373
Telephone (206) 292-2110
Facsimile (206) 292-2104

1 3. The Debtors and the Committee are authorized to enter into and perform under the
2 Cooperation Agreement and take any actions necessary to enter into and perform under the Cooperation
3 Agreement, as modified by the conditions set forth in Section 4., below.

4 4. The Cooperation Agreement is approved on the conditions set forth in this Section and,
5 once effective, shall be binding and enforceable on the parties thereto in accordance with its terms. To
6 address Umpqua Bank's Objection to the entry of the Cooperation Agreement, Buchalter shall not
7 represent the Debtors with respect to any matters associated with the Cooperation Agreement. Umpqua
8 Bank does not waive any right, remedy or action and expressly reserves any and all rights, remedies and
9 actions, including but not limited to those associated with Buchalter's concurrent representation of
10 Umpqua Bank and the Debtors throughout these jointly administered chapter 11 bankruptcy cases, and
11 including any matters associated with the Joint Prosecution of Specified Claims, Discovery
12 Coordination and Strategy Decisions with respect to the alleged Umpqua Claims as described and
13 defined in the Cooperation Agreement.

14 5. Notwithstanding anything in the Bankruptcy Code, the Bankruptcy Rules, or the Local
15 Rules to the contrary, this Order shall be immediately effective and enforceable upon its entry.

16 6. The stay imposed pursuant to Bankruptcy Rule 6004(h) is waived.

17 7. The Debtors are authorized to take all actions necessary to effectuate the relief granted
18 in this Order in accordance with the Motion.

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**ORDER APPROVING ENTRY INTO
AND PERFORMANCE UNDER THE
COOPERATION AGREEMENT– 3**

BUSH KORNFELD LLP
LAW OFFICES
601 Union St., Suite 5000
Seattle, Washington 98101-2373
Telephone (206) 292-2110
Facsimile (206) 292-2104

1 8. This court shall retain jurisdiction and power to hear and determine all matters arising
2 from or related to the implementation of this Order.

3
4 ///END OF ORDER///

5
6 PRESENTED BY:

7
8
9 By /s/ Julian I. Gurule
10 JULIAN I. GURULE (Admitted *Pro Hac Vice*)
O'MELVENY & MYERS LLP

11 *Co-Counsel to Debtor and Debtors in Possession*

12
13 By /s/ Armand J. Kornfeld
ARMAND J. KORNFELD (WSBA # 17214)
14 BUSH KORNFELD LLP

15 *Counsel to Official Committee of Unsecured Creditors*
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**ORDER APPROVING ENTRY INTO
AND PERFORMANCE UNDER THE
COOPERATION AGREEMENT– 4**

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Seattle, Washington 98101-2373
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EXHIBIT B

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9 UNITED STATES BANKRUPTCY COURT
10 EASTERN DISTRICT OF WASHINGTON

11 In re

12 ICAP ENTERPRISES, INC., et al.,

13 Debtors.¹

Chapter 11

Lead Case No. 23-01243-11
(Jointly Administered)

14 **ORDER APPROVING ENTRY**
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21 **ORDER APPROVING ENTRY INTO**
22 **AND PERFORMANCE UNDER THE**
23 **COOPERATION AGREEMENT– 1**

BUSH KORNFELD LLP
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1 Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (the
2 “Debtors”) pursuant to §§ 105(a) and 363(b) of title 11 of the United States Code, 11 U.S.C. §§ 101, et
3 seq. (the “Bankruptcy Code”), Rule 9019 of the Federal Rules of Bankruptcy Procedure (the
4 “Bankruptcy Rules”), and Rule 9019-1 of the Local Rules of the United States Bankruptcy Court for
5 the Eastern District of Washington (the “Local Rules”), for entry of an order approving entry into and
6 performance under the Cooperation Agreement, dated February 6, 2024 (the “Cooperation Agreement”)
7 by and among the Debtors and the Committee, all as more fully set forth in the Motion; and the court
8 having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the court having found
9 this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the court may enter a final order
10 consistent with Article III of the United States Constitution; and the court having found that venue of
11 this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and
12 the court having considered the statements of counsel and the Miller Declaration in support of the
13 Motion and Umpqua Bank’s Objection to Motion to Approve Entry into and Performance Under the
14 Cooperation Agreement [ECF No. 626] (“Umpqua Bank’s Objection”); and it further appearing that the
15 relief requested in the Motion is in the best interests of the Debtors’ bankruptcy estates, their creditors,
16 and other parties in interest; and after due deliberation and sufficient cause appearing therefor,

17 **IT IS HEREBY ORDERED THAT:**

- 18 1. The Motion [ECF No. 470] is **GRANTED**, as set forth below.
- 19 2. The Cooperation Agreement attached hereto as **Exhibit 1** and the terms therein are
20 hereby approved, except as amended by the conditions set forth in Section 4., below.

21 _____

22 ² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion or the
23 Cooperation Agreement, as applicable.

**ORDER APPROVING ENTRY INTO
AND PERFORMANCE UNDER THE
COOPERATION AGREEMENT– 2**

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1 3. The Debtors and the Committee are authorized to enter into and perform under the
2 Cooperation Agreement and take any actions necessary to enter into and perform under the Cooperation
3 Agreement, as modified by the conditions set forth in Section 4., below.

4 4. The Cooperation Agreement is approved ~~in its entirety~~ on the conditions set forth in this
5 Section and, once effective, shall be binding and enforceable on the parties thereto in accordance with
6 its terms. To address Umpqua Bank's Objection to the entry of the Cooperation Agreement, Buchalter
7 shall not represent the Debtors with respect to any matters associated with the Cooperation Agreement.
8 Umpqua Bank does not waive any right, remedy or action and expressly reserves any and all rights,
9 remedies and actions, including but not limited to those associated with Buchalter's concurrent
10 representation of Umpqua Bank and the Debtors throughout these jointly administered chapter 11
11 bankruptcy cases, and including any matters associated with the Joint Prosecution of Specified Claims,
12 Discovery Coordination and Strategy Decisions with respect to the alleged Umpqua Claims as described
13 and defined in the Cooperation Agreement.

14 5. Notwithstanding anything in the Bankruptcy Code, the Bankruptcy Rules, or the Local
15 Rules to the contrary, this Order shall be immediately effective and enforceable upon its entry.

16 6. The stay imposed pursuant to Bankruptcy Rule 6004(h) is waived.

17 7. The Debtors are authorized to take all actions necessary to effectuate the relief granted
18 in this Order in accordance with the Motion.

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**ORDER APPROVING ENTRY INTO
AND PERFORMANCE UNDER THE
COOPERATION AGREEMENT– 3**

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1 8. This court shall retain jurisdiction and power to hear and determine all matters arising
2 from or related to the implementation of this Order.

3
4 ///END OF ORDER///

5
6 PRESENTED BY:

7
8
9 By /s/ Julian I. Gurule
10 JULIAN I. GURULE (Admitted *Pro Hac Vice*)
O'MELVENY & MYERS LLP

11 *Co-Counsel to Debtor and Debtors in Possession*

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13 By /s/ Armand J. Kornfeld
ARMAND J. KORNFELD (WSBA # 17214)
BUSH KORNFELD LLP

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15 *Counsel to Official Committee of Unsecured Creditors*

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**ORDER APPROVING ENTRY INTO
AND PERFORMANCE UNDER THE
COOPERATION AGREEMENT– 4**

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